

Charles M. Tebbutt, WSBA #47255  
Jonathan D. Frohnmayer, *pro hac vice*  
Law Offices of Charles M. Tebbutt, P.C.  
3026 NW Esplanade  
Seattle, WA 98117  
(541) 285-3717

*Additional Counsel Identified on Signature Page to Plaintiffs' Reply*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
non-profit corporation; FRIENDS OF  
TOPPENISH CREEK, a Washington non-  
profit corporation; *and* CENTER FOR  
FOOD SAFETY, a Washington, D.C. non-  
profit corporation,

Plaintiffs,

v.

AUSTIN JACK DECOSTER, an individual,  
DECOSTER ENTERPRISES, LLC, a  
Delaware limited liability company,  
AGRICUTURAL INVESTMENT-FUND  
II, LLC, a Delaware limited liability  
company, IDAHO AGRI INVESTMENTS,  
LLC, an Idaho limited liability company,  
IDAHO DAIRY HOLDINGS, LLC, an  
Idaho limited liability company, DRY  
CREEK DAIRIES, LLC, an Idaho limited  
liability company, WASHIGNTON AGRI  
INVESTMENTS, LLC, a Washington  
limited liability company, WASHINGTON  
DAIRY HOLDINGS, LLC, a Washington  
limited liability company, DBD  
WASHINGTON, LLC, a Washington

Case No. 1:19-CV-3110-TOR

**SECOND DECLARATION OF  
CHARLES M. TEBBUTT IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
AWARD OF ATTORNEYS' AND  
EXPERT WITNESSES' FEES AND  
COSTS**

SECOND DECLARATION OF CHARLES M. TEBBUTT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AWARD OF FEES AND COSTS

1 limited liability company; and SMD, LLC, a  
2 Washington limited liability company,  
3 Defendants.

4 I, Charles M. Tebbutt, hereby declare as follows:

5 1. I am lead counsel for Plaintiffs in the above-captioned cases. I make  
6 this declaration in support of Plaintiffs' Reply In Support of Plaintiffs' Motion for  
7 Award of Attorneys' and Expert Witness Fees and Costs.

8 2. Pursuant to Plaintiffs' fee petition, Plaintiffs reserved the right to  
9 request supplemental "fees on fees" for any time spent after September 10, 2023.  
10 ECF No. 184 at 22. **Appendix A** to the Reply are Plaintiffs' supplemental fees and  
11 costs through today, together with the total fees and costs. As detailed there,  
12 Plaintiffs respectfully request that the Court grant their lodestar award of  
13 \$1,495,052 (or higher if out-of-forum rates are awarded) in fees and \$305,610 in  
14 costs for a total of \$1,800,662 (or higher), from which award the \$350,000 already  
15 paid by Defendants will be subtracted. ECF No. 181 ¶ 54. Plaintiffs will also  
16 request any further fees and costs incurred after the date of this filing.

17 3. Attached hereto as Exhibit 1 are Plaintiffs' supplemental time entries  
18 and cost substantiation. Three of Ms. van Saun's entries were accrued prior to  
19 September 10 but were not included in the original fee petition.  
20

1           4.     The hourly rates of Defendants’ counsel, obtained through subpoenas  
2     duces tecum to all defense firms in the case, are set out in **Appendix B** to the  
3     Reply. As noted in the Reply, Sidley Austin’s attorneys refused to provide their  
4     exact rates, but lead counsel Frank Volpe represented in an e-mail to Plaintiffs that  
5     his rate in this matter “was higher than the ‘rate requested’ and the ‘alt. rate  
6     requested-National’ listed for Mr. Tebbutt in Appendix A” of the fee petition, ECF  
7     No. 184. *See* e-mail exchange attached hereto as Exhibit 2. The latter rate was  
8     \$735; the chart in Appendix B, therefore, denotes Mr. Volpe’s rate as “\$735+.”  
9     Marten Law’s rates varied for different years; the rates in Appendix B are for the  
10    most recent year that Marten Law indicated. Marten Law’s letter denoting all of  
11    their rates is attached hereto as Exhibit 3.

12           5.     Amy Van Saun’s time, and that of her colleagues at CFS, was critical  
13    to trial preparation. At the time that work was done, Plaintiffs were gearing up for  
14    a motion for partial summary judgment similar to the motion that succeeded in the  
15    *Cow Palace* case. The motion for partial summary judgment was put on hold  
16    multiple times when it appeared that the parties had an agreement in principle to  
17    resolve the case. Negotiations for settlement and trial preparation were going on  
18    simultaneously, so all the work was necessary and should be compensated.

19           6.     Defendants also ask the Court to exclude all of Amanda Steiner’s 42  
20    hours spent in early 2021 researching RCRA liability. ECF No. 186 at 17.

1 However, those hours were spent researching one of the most important legal  
2 issues in this case: whether Defendant Austin “Jack” DeCoster, as well as his shell  
3 companies, could be liable under RCRA. Ms. Steiner drafted and circulated to co-  
4 counsel a seven-page, single-spaced memo on this topic that formulated the basis  
5 of Plaintiffs’ motion to add DeCoster. Adding DeCoster as a party was critical to  
6 having this case resolve. Among other theories of liability, the memorandum  
7 clearly and thoroughly analyzed the myriad ways in which Mr. DeCoster exercised  
8 “a measure of control” over Defendants’ waste management practices and was thus  
9 liable under RCRA pursuant to *Hinds Investments, L.P. v. Angioli* for  
10 “contributing” to the disposal of hazardous waste. 654 F.3d 846, 852 (9th Cir.  
11 2011). Plaintiffs employed Ms. Steiner’s analysis in their Response in Opposition  
12 to Defendants’ Joint Motion to Dismiss, *see* ECF No. 115 at 18-19, and this Court  
13 agreed with that analysis. *See* ECF No. 134 at 19-20 (“Plaintiffs allege Defendant  
14 DeCoster specifically uses Washington Dairy Holdings, LLC and Washington  
15 Agri-Investments, LLC to direct the manure operations at the dairies. . . . These  
16 allegations . . . are sufficient for the Court to infer that Non-Washington  
17 Defendants . . . had a ‘measure of control’ over the manure application and  
18 storage.”). That Order put Plaintiffs in a strong position to hold all of the  
19 Defendants liable and led Defendants on their eventual path to settlement.  
20 Therefore, all of Ms. Steiner’s hours should be compensated.

1           7.     Mr. Carroll came into this case very late and thus cannot speak to the  
2 time that was spent developing, prosecuting, and negotiating this case. There was  
3 extensive negotiating underway on four different sets of occasions with multiple  
4 different sets of attorneys each time, thus making discussions very difficult due to  
5 the lack of continuity of Defendants' counsel and surrogates (sometimes Mr.  
6 Glessner and other times no apparent client representative).

7           8.     I was also never aware that Mr. Carroll was involved in the *CARE v*  
8 *Sunnyside* matter. We never had contact in that case and he never made an  
9 appearance.

10          9.     The Declaration of David Erickson goes into further detail of some of  
11 the roles he played in the litigation in addition to that which is set forth in my first  
12 declaration. Suffice it say that Mr. Erickson played a critical role in this case, both  
13 in negotiations and as an expert witness. All of his time should be compensated.

14          10.    I declare under penalty of perjury that the foregoing is true and correct  
15 to the best of my knowledge.

16          DATED: October 25, 2023

17  
18                               /s/ Charles M. Tebbutt  
19                               Charles M. Tebbutt  
20                               Law Offices of Charles M. Tebbutt

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2023, I electronically filed the foregoing document, together with all exhibits thereto, on the Court's CM/ECF filing system, which will automatically serve the following counsel of record:

Gary H. Baise	vthedgerow@aol.com
Jay Carroll	jcarroll@hnw.law
Amy van Saun	avansaun@centerforfoodsafety.org
Toby Marshall	tmarshall@terrellmarshall.com
Blythe H. Chandler	bchandler@terrellmarshall.com
Andrea K. Rodgers	andrearodgers42@gmail.com
Daniel C. Snyder	dsnyder@publicjustice.net

/s/ Jonathan D. Frohnmayer  
Jonathan D. Frohnmayer  
Law Offices of Charles M. Tebbutt

## **Exhibit 1 – Plaintiffs’ Supplemental Fees and Costs**

Date	Atty	Description	Time
9/11/23	CT	ph w/ DS re: fee pet & decls (.2); emails to co-counsel re: decls	1.4
9/11/23	CT	CD overright - ph w/ DE re: RI issues	0.2
9/12/23	CT	edit J.Mendoza decl (.3); desc w/ A. Rodgers re: decl piece (.2) work on CT decl & hourly rates (.4); ph w/ JF re: fee pet pieces statue (.2); edit CT decl (.8); review further CT decl edits by AR (.3); comms w/ expert P. Kampaeier re: docs & decl (.3)	2.5
9/13/23	CT	work on CT decl (2.3); emails w/ PK re: review (.3); ph w/ JF & MT re: petition assignments (.5); ph: w/DS re status (.2); ph w/ PK re: his decl questions (.6)	3.9
9/14/23	CT	work on fee spreadsheet (.5); memo to counsel re: rates & hours (.3); cont work on my decl (2.0); ph w/ JF re: brief & decls (.4); work on fee brief (2.0); review Kampaeier decl (1.0); ph w/ PK re: decl issues (.2)	6.4
9/15/23	CT	fee petition filing final review of brief, decls, and exhibits (4.8); ph w/JF re: status (.2); ph w/ Halverson re: overheighten brief (.2)	5.2
9/18/23	CT	corresp w/ client FOTC re: fee petition issues	0.2
9/28/23	CT	review emails re: Lag 5 & respond (.3) - CD implementation	0.3
10/2/23	CT	Ph w/ JF re: defense rates	0.2
10/10/23	CT	Ph w/ JF re: status of fee petition	0.2
10/16/23	CT	read memo in opp to fees (.4); read Montoya decl (.2); read Carroll decl (.2); read Stephen decl (.2); initial notes for reply (.5); disc w/ AR (.3)	1.8
10/17/23	CT	ph w/ DS re: reply issues (.3); review atty rate responses (.2); email to DE re: reply decl (.2); edit initial draft of reply brief & send w/ memo to JF & DS (2.0)	2.7
10/18/23	CT	read brief on fees for work not filed & send to JF (.3); ph w/ DE re: reply decl (.2); work on DE decl (1.4)	1.9
10/19/23	CT	work on CT declaration (1.2); ph w JF re reply tasks (.2); edit reply brief (1.5)	2.9
10/20/23	CT	ph w MT re updated hours and reply needs (.2); ph w DE re declaration (.2); ph w J Mendoza of FOTC re fees reply issues (.4); review email and respond re Volpe rates (.2); ph w JF re reply brief issues (.2)	1.2
10/23/23	CT	ph w DS re reply issues (.2); ph w JF re reply issues (.2)	0.4
10/24/23	CT	edit CT and DE declarations (.5); edit reply brief (.7); ph w JF	1.4
<b>Total</b>			<b>32.8</b>

Date	Secretary	Description	Time
10/23/23	MT	Review and compile costs and CT hours for Reply	0.5



Date	Atty	Description	Time
9/11/23	DS	Call with CT re: fee petition (.2); rev edits from CT on Mot for Fees and Costs, consider (.3)	0.5
9/12/23	DS	Rev DCS declaration and timesheet, make edits	1.0
9/12/23	DS	Rev CMT decl, edits, emails re: same	0.7
9/12/23	DS	Rev email from FV re: SDT, consider, call re: same, respond	0.2
9/13/23	DS	Calls with CT and MT re: fee petition status and needs	0.6
9/14/23	DS	Finalize PJ materials for fee petition: final spreadsheet and decl	2.0
10/16/23	DS	Review DBD fee opposition - Response, Three Declarations. Consider response. Take notes.	2.1
10/17/23	DS	Rev cases, add'l case law research for reply brief.	1.7
10/17/23	DS	Draft and edit first round fee reply (4.1), call w/ CT re: same (.4); careful comparison of WA CAFO Permit and CD (1.2).	5.7
10/17/23	DS	Rev and consider first edition of CT Decl for content, rev email re: same; rev email to DE re: need for add'l decl, consider.	0.4
10/17/23	DS	Emails to opposing counsel re: need for hourly rates now that DBD contested our rates	0.3
10/18/23	DS	Rev emails from CT and JF re: fee reply declarations and edits, consider.	0.3
10/23/23	DS	Call with CT x2 to discuss status of fee reply and declarations	0.3
10/24/23	DS	Review newest versions of Reply, CT declaration, Erickson declaration, and compare against D's filings. Edit and revise. Consider, then send email to team re: same.	3.2
10/24/23	DS	Billing for fees-on-fees.	0.5
10/25/23	DS	Review near finals and emails re same.	0.3
<b>Total</b>			<b>19.8</b>

Date	Atty	Description	Time
9/11/23	JF	Continue revising fee petition and CT declaration and circulate draft to all attorneys (1.8); further revise CT declaration and circulate draft (3.7)	5.5
9/12/23	JF	Revise CT, DS, and Jean Mendoza declaration (2.3); revise fee spreadsheet for all attorneys (1.2); further revise CT declaration to incorporate AR comments (0.8); discuss status of fee petition with CT (0.2); compile personal fees (1.0)	5.3
9/13/23	JF	Revise fee petition re: Laffey and USAO rates (0.4); call with CT re fee petition status (0.4); revise time entries (1.2); update all timekeepers fee spreadsheet and circulate to CT and DS (3.0); further revise based on different inflation number (0.4)	5.4
9/14/23	JF	Revise total fee spreadsheet (0.5); revise and circulate Mendoza and Rodgers declarations (0.5); call with CT to discuss status and strategy (0.4); further revise fee petition re: overall rates and Mendoza statements (1.3); further revise CT decl. (2.4); further revise overall fees for PJ's final hours (0.1); review Kampmeier decl. (0.1); correspond with TM regarding updated fees (0.2); review TM declaration (0.2); revise fee petition and CT declaration in parallel and update total fee Appendix (2.1); work on total costs spreadsheet (0.7); revise DS, AKR, CT, and TM declarations and circulate to all relevant parties (1.9)	10.4
9/15/23	JF	Call with CT re status of all filings (0.2); call with AVS re: declaration (0.1); revise AVS, AKR, and Snyder declarations and circulate to relevant parties (0.5); call with P. Kampmeier (0.2); revise fee petition re: Kampmeier decl. and total fees and costs (3.3); finalize and circulate near-final CT decl. (1.3); review near-final brief (0.4); review motion for overlength brief (0.5); prepare all documents for filing and file (3.5); update file (0.2)	10.2
9/18/23	JF	Review correspondence between CT and Court re: overlength motion (0.2)	0.2
9/29/23	JF	Correspond with CT re opposing attorney fee chart (0.2)	0.2
10/2/23	JF	Call with CT re opposing counsel fees (0.2)	0.2
10/3/23	JF	Prepare opposing counsel fee listing and circulate to CT (1.0)	1.0
10/10/23	JF	Discuss status and strategy with CT (0.2)	0.2
10/16/23	JF	Review Defendants' opposition to fee award (1.8)	1.8
10/17/23	JF	Review correspondence from CT and DS re reply to fee petition (0.3); review correspondence between DS and Frank Volpe/Kent Krabill re defense counsel fees (0.2); call with CT re status (0.2); revise Reply draft (3.9)	4.6
10/18/23	JF	Review correspondence from CT re fee petition (0.1); revise fee opposition and circulate drafts to CT and DS (3.0); review correspondence from Franke Volpe and discuss with CT and DS (0.2); draft and circulate second Tebbutt declaration and review prior docket entries and AS memo in connection with same (5.1)	8.4

10/19/23	JF	Review correspondence from CT re DE declaration (0.1); call with CT to discuss status of Reply (0.2); work on Erickson declaration and circulate to DE and CT (2.7); correspond with AVS, BC, and AKR re fees on fees request (0.4); correspond with Frank Volpe re subpoena for rates (0.2); review CT edits to Reply, make further revisions, and circulate to co-counsel (1.5); review fees on fees for DS (0.1); edit CT declaration (0.2); prepare personal time sheet (0.3); follow up with Jeff Kray re subpoena (0.2); correspond with DS re status of Reply (0.1)	6.0
10/20/23	JF	Call with CT re status of Reply and declarations (0.2); review current drafts of filings (0.1); review further correspondence from Frank Volpe and correspond with DS and CT re same (0.2); further revise Reply and CT declaration and circulate same to DS and CT (1.8); circulate items to Jean Mendoza (0.1)	2.4
10/23/23	JF	Correspond with DS re Reply and CT declaration (0.1); correspond with BC, AKR, and CT re additional time entries (0.3); correspond with Jeff Kray re Marten counsel rates (0.1); correspond with DE re declaration and supplemental fees (0.4); call with CT re status of Reply (0.2); draft revised total fees and costs appendix (1.1); revise Erickson Declaration and compile exhibits (1.7); review CT timesheet (0.3); draft and circulate timesheet to AKR (0.2); compile time entry for Marisela Taylor (0.1); review exhibits for CT declaration (0.1); review correspondence from B. Chandler re supplemental fees (0.1)	4.7
10/24/23	JF	Review DS edits to Reply, CT declaration, and DE declaration, revise same and opposing counsel rates exhibit and circulate near-final drafts of same (2.0); correspond further with DS re drafts and review and edit CT edits to all documents (1.4); circulate near-final Erickson declaration to DE (0.5); finalize Appendix B (0.3); finalize Appendix A (0.9); revise and format all timesheets (0.5); make final edits on CT declaration and Reply and circulate to CT and DS (0.5)	6.1
10/25/23	JF	Prepare all documents for filing	4.0
<b>Total</b>			<b>76.6</b>

Law Offices of Andrea K. Rodgers

3026 NW Esplanade, Seattle, WA 98117

T: (206) 696-2851

Email: andrearodgers42@gmail.com

Date	Atty	Task	Hrs
9/12/23	AR	Rev. and edit CT decl.	0.3
9/12/23	AR	Draft and circulate AKR decl.	0.7
<b>TOTAL</b>			<b>1</b>



Date Range: 4/1/2023 - 10/19/2023

Person	Matter	Date	Task	Comment	Hours
Amy Van Saun	CAFO - C10 Yakima				
		8/28/2023	Administrative	draft atty declaration for CFS hours in DBD/SMD	2.60
		8/31/2023	Administrative	SMD/DBD declaration for CFS hours for fee petition	0.50
		9/12/2023	Administrative	revise declaration in support of fee petition for CFS timekeepers	0.40
		9/14/2023	Administrative	review spreadsheet for all timekeepers for accuracy of CFS timekeepers	0.20
		9/15/2023	Administrative	review final declaration and timesheet/hourly rates	0.30
				CAFO - C10 Yakima Total:	4.00
				Amy Van Saun Total:	4.00
				Grand Total	4.00

<b>DATE</b>	<b>INITIALS</b>	<b>NARRATIVE</b>	<b>UNITS</b>
9/13/23	BHC	Revised declaration supporting motion for fees and exhibits to same [.6].	0.6
9/14/23	BHC	Worked on declaration supporting motion for fees, time records, and motion for fees [1.5].	1.5
9/15/23	BHC	Reviewed final revisions to fees declaration and approved same [.2].	0.2
<b>TOTAL</b>			<b>2.3</b>

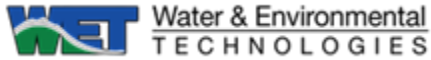
## Expenses on Declaration 10/25/23

Dave Erickson <derickson@waterenvtech.com>

Wed 10/25/2023 12:15 PM

To: Jon Frohnmayer <jon@tebbuttlaw.com>

3.75 Hours at \$300/hr = \$1125



### David Erickson PG CPG

Founder/Principal

P: (406) 782-5220

C: (406) 490-2915

[[waterenvtech.com](http://waterenvtech.com)]waterenvtech.com



	Date	LOCMT costs	Account	Amount
<b>Research Services</b>				
	09/30/2023	PACER	Research	86.50
	09/30/2023	lexis nexis	Research	207.83
	10/22/2023	PACER	Research	81.40
	10/22/2023	lexis nexis	Research	186.15
Total Research Services				<u>561.88</u>
				<u><u>561.88</u></u>



## **Exhibit 2 – E-mail Exchange with Sidley Austin**

RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Volpe, Frank R. <fvolpe@sidley.com>

Fri 10/20/2023 12:33 PM

To: Jon Frohnmayer <jon@tebbuttllaw.com>

Cc: Charlie Tebbutt <Charlie@tebbuttllaw.com>; Dan Snyder <dsnyder@publicjustice.net>; Fradette, Jacquelyn E <jfradette@sidley.com>

Jon:

Thanks for your email. Reviewing the Kerr case that you rely upon to support your petition, here are the relevant factors: "(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases." I don't see the Defendants' choice of counsel or the fees paid to that counsel as being a relevant consideration.

Sidley worked on limited aspects of the case (primarily, the motion to dismiss and Mr. DeCoster's deposition). We still have a hard time seeing what the Firm's rates for work on this matter have to do with what rates the Court might grant Plaintiffs' counsel. I also don't believe the fact that other firms gave you the information you requested is a relevant consideration. I don't know why they provided you the information. In any event, if they did, it sounds like you have sufficient information to make the point you want to make.

Without waiving our objection to providing more detailed information, I can represent to you that my billing rate for this matter was higher than the "rate requested" and the "alt. rate requested-National" listed for Mr. Tebbutt in Appendix A of your fee petition. I trust that representation will suffice for your purposes.

Regards, Frank

FRANK R. VOLPE

SIDLEY AUSTIN LLP

+1 202 736 8366

[fvolpe@sidley.com](mailto:fvolpe@sidley.com)

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**From:** Jon Frohnmayer <jon@tebbuttllaw.com>

**Sent:** Thursday, October 19, 2023 2:42 PM

**To:** Volpe, Frank R. <fvolpe@sidley.com>

**Cc:** Charlie Tebbutt <Charlie@tebbuttllaw.com>; Dan Snyder <dsnyder@publicjustice.net>; Fradette, Jacquelyn E <jfradette@sidley.com>

**Subject:** Re: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Frank: as you know, Defendants argue in their response that Plaintiffs should not be entitled to non-forum rates because local counsel would have been adequate. The fact that Defendants used multiple national law firms charging significantly higher rates than the forum rates for which Defendants argue, which we can only assume is true for Sidley Austin, directly undercuts that argument. Multiple other firms, including Lynn Pinker Hurst and Olsson Frank Weeda, already complied with our subpoena, and no one else has refused to do so. We reiterate our request to you and will contest a motion to quash. Thank you.

---

**From:** Volpe, Frank R. <fvolpe@sidley.com>

**Sent:** Wednesday, October 18, 2023 11:30 AM

**To:** Dan Snyder <dsnyder@publicjustice.net>; Fradette, Jacquelyn E <jfradette@sidley.com>

**Cc:** Charlie Tebbutt <Charlie@tebbuttllaw.com>; Jon Frohnmayer <jon@tebbuttllaw.com>

**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Dan: I have reviewed the attorney fee pleadings (and the caselaw cited therein) and while I do not have a view on either side's substantive positions as to whether additional fees should be awarded, I am confident that the hourly rates of Sidley attorneys in DC have no relevance to what hourly rates the Court should use in determining what, if anything, Plaintiffs' counsel should be awarded. I ask that you withdraw your subpoena, so we don't have to move to quash it.

Regards,

Frank

FRANK R. VOLPE

SIDLEY AUSTIN LLP

+1 202 736 8366

[fvolpe@sidley.com](mailto:fvolpe@sidley.com)

---

**From:** Dan Snyder <dsnyder@publicjustice.net>

**Sent:** Tuesday, October 17, 2023 8:41 AM

**To:** Volpe, Frank R. <fvolpe@sidley.com>; Fradette, Jacquelyn E <jfradette@sidley.com>

1

Cc: Charlie Tebbutt <[Charlie@tebbuttlaw.com](mailto:Charlie@tebbuttlaw.com)>; [jon@tebbuttlaw.com](mailto:jon@tebbuttlaw.com)

Subject: RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Dear Frank – Defendants did indeed contest our hourly rates, and we are therefore seeking compliance with the subpoena duces tecum for which you accepted service on behalf of Sidley Austin. Fee opposition attached.

Please provide us with the hourly rate required documentation ASAP.

Best,

Dan



PUBLIC JUSTICE  
IMPACT. CHANGE.

Daniel C. Snyder

*Director*

**The Environmental Enforcement Project**

**Public Justice**

Pronouns: he/him

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[www.publicjustice.net](http://www.publicjustice.net)

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# Platinum Transparency 2023

## Candid.

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**From:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>  
**Sent:** Wednesday, September 13, 2023 11:04 AM  
**To:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>; Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Dan:

We'll accept service of the subpoena if you agree to stay compliance with it as you and the other side sort out your positions. We reserve all objections to the subpoena and the information it seeks.

Regards, Frank

**FRANK R. VOLPE**

**SIDLEY AUSTIN LLP**  
+1 202 736 8366  
[fvolpe@sidley.com](mailto:fvolpe@sidley.com)

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**From:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>  
**Sent:** Tuesday, September 12, 2023 3:15 PM  
**To:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>; Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Frank – Please provide an update when you can. Thank you.

Dan

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**From:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>  
**Sent:** Friday, September 8, 2023 3:58 PM  
**To:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>; Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

We are seeking approval to provide you the requested information without the need for the subpoena. We hope to resolve the issue by Monday.

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

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**From:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>  
**Date:** Thursday, Sep 07, 2023 at 4:46 PM  
**To:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>, Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Thanks for the reply, Frank. The case was settled by Consent Decree, and Defendants had an opportunity to pay Plaintiffs' fees and cost demand, or to litigate they issue. Defendants have chosen to litigate, with our fee petition due to the Court on 9/15.

As Exhibit A to the SDT states, we are only looking for responsive records in the event Defendants challenge our hourly rates. If you will agree to accept service, we can stay compliance with the subpoena pending the arguments that Defendants raise. Of course, I'm always willing to consider other options, which you suggest in your email may be a possibility.

Best,

Dan

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**From:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>  
**Sent:** Thursday, September 7, 2023 3:17 PM  
**To:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>; Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

We think there are other ways to get you the information without issuing a subpoena. As you know, we are no longer in the case so we don't know where the discussions currently stand with regard to fees. I understood there was an agreement as to fees. Seems I'm wrong. We will get back to you. Please hold off issuing a subpoena. Is there some urgency to your request?

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

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**From:** Dan Snyder <[dsnyder@publicjustice.net](mailto:dsnyder@publicjustice.net)>  
**Date:** Thursday, Sep 07, 2023 at 3:16 PM  
**To:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>, Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Subject:** RE: CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Greetings Counsel,

I just tried reaching Jacquelyn at her listed number. Can one of you please respond today and let me know if you will accept service of the subpoena provided below?

Thank you,

Dan

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**From:** Dan Snyder  
**Sent:** Friday, September 1, 2023 1:26 PM  
**To:** Volpe, Frank R. <[fvolpe@sidley.com](mailto:fvolpe@sidley.com)>; Fradette, Jacquelyn E <[jfradette@sidley.com](mailto:jfradette@sidley.com)>  
**Cc:** Charlie Tebbutt <[Charlie@tebbuttlaw.com](mailto:Charlie@tebbuttlaw.com)>; 'Amy van Saun' <[AvanSaun@centerforfoodsafety.org](mailto:AvanSaun@centerforfoodsafety.org)>; [jon@tebbuttlaw.com](mailto:jon@tebbuttlaw.com)  
**Subject:** CARE et al. v. DBD Washington LLC et al., 1:19-cv-3110 - Subpoena Duces Tecum

Dear Frank and Jacquelyn,

Please find attached for service a subpoena duces tecum directed at Sidley Austin LLP in the above-captioned case.

If you do not accept service of this subpoena by email on behalf of your firm, then please let us know ASAP and no later than next Wednesday, September 6, and we will incur the costs of having a process server serve the subpoena on you. Please note that we will seek to recover these costs against Defendants in a supplemental fee petition.

Sincerely,

Dan



PUBLIC JUSTICE  
IMPACT. CHANGE

**Daniel C. Snyder**

*Senior Attorney*

**The Environmental Enforcement Project**

**Public Justice**

Pronouns: he/him

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# Platinum Transparency 2023

## Candid.

\*\*\*\*\*  
This e-mail is sent by a law firm and may contain information that is privileged or confidential.  
If you are not the intended recipient, please delete the e-mail and any attachments and notify us  
immediately.  
\*\*\*\*\*



## **Exhibit 3 – Marten Law Fee Rate Letter**



# MARTEN LAW

October 23, 2023

*Via email*

Mr. Charles M. Tebbutt  
Law Offices of Charles M. Tebbutt, P.C.  
941 Lawrence Street  
Eugene, OR 97401  
[charlie@tebbuttlaw.com](mailto:charlie@tebbuttlaw.com)

Re: ***CARE, et al. v. Washington Dairy Holdings, LLC, et al.,***  
***No. 1:19-cv-03110-TOR***  
*Subpoena Duces Tecum to Marten Law, LLP*

Dear Charlie:

In response to the Subpoena Duces Tecum served on Marten Law, LLP (“Marten”) on September 1, 2023, I am providing the following information concerning Marten’s hourly rates:

Marten Employee	Title	2019 Rate	2020 Rate	2021 Rate	2022 Rate
Brad Marten	Partner			\$890	\$890
Jeff Kray	Partner	\$515	\$515/\$495	\$495	\$495/\$625
Jessica Ferrell	Partner			\$410	
Stephen Odell	Partner		\$495/\$435	\$435	
Lawson Fite	Partner			\$625/\$675	\$675
Jennifer Hammitt	Associate	\$385	\$385		
Merissa Moeller	Associate	\$315			
Alexa Shasteen	Associate		\$315		
Michael Smith	Associate		\$280		
Sara Cloon	Associate			\$465	\$465
Ana Nina	Associate			\$355	
Jack Ross	Associate			\$345	
Kameron Schroeder	Associate				\$405

Mr. Charles M. Tebbutt

October 23, 2023

Page 2

Marten Employee	Title	2019 Rate	2020 Rate	2021 Rate	2022 Rate
Zachary Zahner	Associate				\$405
Marina Goodrich	Paralegal	\$235/\$280	\$280	\$280	\$280
Erin Herlihy	Paralegal		\$165	\$165	\$165
David Baker	Paralegal		\$235		

Marten Law, LLP contends that this letter satisfies the September 1, 2023, Subpoena Duces Tecum directed to it in this action. Please confirm that no further response to the Subpoena Duces Tecum is required.

Sincerely,



Jeff Kray